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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re the Marriage of RENEE S. and
KENNETH S. KEATING.

RENEE S. KEATING,

Respondent,

v.

KENNETH S. KEATING,

Appellant.

C061789

(Super. Ct. No.
08FL 00161)

Kenneth S. Keating (husband), appeals from an order pendente lite of attorney fees compelling him to pay \$6,000 to counsel for Renee S. Keating (wife).¹ Husband contends the trial court erred in failing to consider the relevant statutory factors before imposing its order for fees, and in incorrectly

¹ "An award pendente lite of . . . attorney fees is appealable independent of a final judgment. (*Carbone v. Superior Court* (1941) 18 Cal.2d 768, 772; *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368.)" (*Alicia R. v. Timothy M.* (1994) 29 Cal.App.4th 1232, 1234, fn. 1.)

calculating husband's net spendable income. The lack of a complete reporter's transcript, however, precludes review of husband's claims. Accordingly, we affirm the court's order.

BACKGROUND

In January 2008, wife filed a petition for dissolution of her marriage to husband. In November 2008, wife filed an order to show cause seeking, among other things, \$18,036 in attorney fees to be paid by husband. Wife requested fees be ordered as a sanction pursuant to Family Code section 271² and/or based on her need and husband's ability to pay pursuant to section 2030. Husband opposed wife's request and asked the court to order wife to pay to husband's attorney fees totaling \$5,409.44.

Wife and husband each submitted current income and expense declarations prior to the hearing on wife's request for fees. Wife declared her monthly income to be \$1,200 and her monthly expenses to be \$4,781. Wife further indicated her assets were valued at \$51,000 and she had credit card debt totaling \$12,160.

In his income and expense declaration, husband declared his income in the prior month was \$4,446.70, and his average monthly income was \$2,213.30. Husband further declared an average monthly bonus or commission of \$566.32. Husband's monthly expenses, including medical expenses, totaled \$2,844.12, and his credit card debt exceeded \$35,000. Husband's only listed asset

² Undesignated statutory references are to the Family Code.

was cash, in the amount of \$1,400. Although he indicated some other property real or personal, he was unsure of its value.

The record on appeal further establishes that pursuant to prior orders of the court, husband was paying \$1,051 per month to wife in child support and \$314 per month in spousal support. Husband also was previously ordered to pay \$5,000 toward wife's attorney fees.

The hearing on wife's request for fees was held on February 18, 2009. The record on appeal includes only a partial transcript from that hearing, at the conclusion of which the court denied wife's request for attorney fees as sanctions but awarded her fees pendente lite pursuant to section 2030.

In reaching its decision, the trial court accepted husband's declared monthly income of \$4,400, deducted his monthly child support obligation, and calculated husband's monthly net spendable income at \$3,350. The court also accepted wife's declared income of \$1,200 per month, added her monthly spousal support payment, and calculated wife's monthly net spendable income at \$1,504. Thus, the trial court concluded husband had twice the monthly net spendable income of wife.

Husband asked the court also to consider his expenses, including the extraordinary expenses he incurred or was soon to incur paying for supervised visits with the parties' children, paying for the custody evaluation, and the prior order for fees. The court indicated said expenses were considered, and ordered husband to pay to wife's attorney \$6,000. The court further ordered husband to pay the balance of \$3,000 owing on the prior

order for wife's attorney fees. Husband appeals from that order.

DISCUSSION

On appeal, we begin with the presumption that the trial court's judgment is correct and supported by substantial evidence. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Consistent with this presumption, we draw all inferences in favor of the judgment unless the record expressly contradicts them. (*Ibid.*) An appellant must affirmatively demonstrate grounds for reversal because trial court error will not be assumed. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549 (*Sullivan*).)

In addition to shouldering the burden of demonstrating error, an appellant "further bears the burden to provide a record on appeal which affirmatively shows that there was an error below, and any uncertainty in the record must be resolved against the [appellant]." (*Sullivan, supra*, 151 Cal.App.4th at p. 549; accord *People v. \$17,522.08 United States Currency* (2006) 142 Cal.App.4th 1076, 1084.) An incomplete reporter's transcript precludes review of a trial court exercising its discretion because the missing portions will be presumed to support the judgment. (*In re Silva* (1931) 213 Cal. 446, 448; see also *Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.)

Even if the extant portion of an incomplete reporter's transcript indicated error, we would nonetheless be compelled to affirm. A reversal of the judgment may not be made except after a review of the entire record. (Cal. Const., art. VI, § 13.)

"Appellate inquiry into prejudice is not a process of subtracting the invalid elements to ascertain whether the remaining record is adequate to sustain [the judgment]. Rather, the process entails scrutiny of the *entire* record to determine the error's influence." (*People v. Hopper* (1969) 268 Cal.App.2d 774, 778, italics added.) Appeals made on inadequate records preclude review. With these principles in mind, we turn to husband's contentions.

On appeal, husband contends the trial court failed to consider all of the relevant statutory factors in awarding fees under section 2030 and abused its discretion in ordering him to pay \$6,000 in fees to wife's attorney by failing to properly calculate the parties' monthly net spendable income.

An order for pendente lite fees will be reversed on appeal "'only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made. [Citations.]" [Citation.]" (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 769.) Here, the lack of a complete record precludes us from determining whether in light of all the evidence considered by the trial court "no judge could reasonably make the order made."

Accordingly, we must affirm the order on appeal.

DISPOSITION

The trial court's judgment (order) is affirmed. Wife shall recover her costs on appeal, if any. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

NICHOLSON, J.

We concur:

SIMS, Acting P. J.

RAYE, J.